

## SENATE BILL No. 258

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4-12.

**Synopsis:** Adult oriented establishment regulation. Creates the adult oriented establishment license. Provides for local control over licensing of adult oriented establishments. Prohibits operation of an adult oriented establishment without an adult oriented establishment license. Requires an employee of an adult oriented establishment to have an adult oriented establishment permit. Provides for fees and penalties. Imposes other requirements.

**Effective:** July 1, 1999.

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**Miller**

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January 6, 1999, read first time and referred to Committee on Governmental and Regulatory Affairs.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## SENATE BILL No. 258

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations and local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-4-12 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 1999]:
- 4 **Chapter 12. Adult Oriented Entertainment Licenses**
- 5 **Sec. 1. As used in this chapter, "adult bookstore" means a**
- 6 **business that offers as its principal or predominate stock or trade:**
- 7 **(1) sexually oriented:**
- 8 **(A) material;**
- 9 **(B) devices; or**
- 10 **(C) paraphernalia;**
- 11 **(2) specified sexual activities; or**
- 12 **(3) any combination or form of items or activities described in**
- 13 **subdivision (1) or (2), whether:**
- 14 **(A) printed;**
- 15 **(B) filmed;**
- 16 **(C) recorded; or**
- 17 **(D) live;**



and that restricts or purports to restrict admission to adults or to any class of adults.

Sec. 2. As used in this chapter, "adult cabaret" means an establishment that features as a principal use of its business and source of income an entertainer, a member of the wait staff, a bartender, or any other employee who exposes to public view of the patrons within the establishment, at any time:

- (1) the bare female breast below a point immediately above the top of the areola;
- (2) human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material; including:
  - (A) swim suits;
  - (B) lingerie; or
  - (C) latex covering.

The term includes an establishment that features entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainers.

Sec. 3. As used in this chapter, "adult entertainment" means any exhibition of an adult oriented:

- (1) motion picture;
- (2) live performance;
- (3) display; or
- (4) dance;

that has, as a significant or substantial part of the performance, any actual or simulated performance of specified sexual activities of exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.

Sec. 4. As used in this chapter, "adult mini-motion picture theater" means an enclosed building, with a capacity of less than fifty (50) persons, regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this chapter, for observation by patrons.

Sec. 5. As used in this chapter, "adult motion picture theater" means an enclosed building, with a capacity of at least fifty (50) persons, regularly used for presenting material having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas



as defined in this chapter, for observation by patrons.

**Sec. 6.** As used in this chapter, "adult oriented establishment" includes, but is not limited to:

- (1) an adult bookstore;
- (2) an adult motion picture theater;
- (3) an adult mini-motion picture establishment;
- (4) an adult cabaret;
- (5) an escort agency;
- (6) a sexual encounter center;
- (7) a massage parlor;
- (8) a rap parlor;
- (9) a sauna;
- (10) any premises to which the public patrons or members are invited or admitted and that are physically arranged to provide booths, cubicles, rooms, compartments, or stalls separate from the common areas of the premises for the purpose of viewing adult oriented motion pictures, or where an entertainer provides adult entertainment to a member of the public, a patron, or a member for a profit; and
- (11) any adult entertainment studio or any premises used, advertised, or represented as:
  - (A) an adult entertainment studio;
  - (B) a rap studio;
  - (C) an exotic dance studio;
  - (D) an encounter studio;
  - (E) a sensitivity studio;
  - (F) a model studio; or
  - (G) an escort service.

**Sec. 7.** As used in this chapter, "employee" means a person who performs any service on the premises of an adult oriented establishment on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the person is paid a salary, wage, or other compensation by the operator of the business. The term does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

**Sec. 8.** As used in this chapter, "entertainer" means a person who provides entertainment within an adult oriented establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee, escort, or independent contractor.



1       **Sec. 9.** As used in this chapter, "escort" means a person who, for  
 2       monetary consideration in the form of a fee, commission, salary, or  
 3       tip:

- 4       (1) dates;
- 5       (2) socializes with;
- 6       (3) visits;
- 7       (4) consorts with;
- 8       (5) accompanies; or
- 9       (6) offers to:
  - 10      (A) date;
  - 11      (B) socialize with;
  - 12      (C) visit;
  - 13      (D) consort with; or
  - 14      (E) accompany;

15       a patron to social affairs, entertainment, or places of amusement,  
 16       or within any place of public resort or within any private quarters  
 17       of a place of public resort.

18       **Sec. 10.** As used in this chapter, "escort service" means a person  
 19       who, for a fee, commission, profit, payment, or other monetary  
 20       consideration, furnishes or offers to furnish escorts or provides or  
 21       offers to introduce patrons to escorts.

22       **Sec. 11.** As used in this chapter, "law enforcement official"  
 23       means the law enforcement agency responsible for enforcement of  
 24       this chapter in a political subdivision as selected by the executive  
 25       (as defined in IC 36-1-2-5) of the political subdivision having  
 26       jurisdiction over the adult entertainment.

27       **Sec. 12.** As used in this chapter, "licensing authority" or  
 28       "authority" means the licensing authority designated by the  
 29       executive (as defined in IC 36-1-2-5) of the political subdivision  
 30       having jurisdiction over the adult entertainment.

31       **Sec. 13.** As used in this chapter, "massage parlor" means an  
 32       establishment or place primarily in the business of providing  
 33       massage or tanning services where one (1) or more of the  
 34       employees exposes to public view of the patrons within the  
 35       establishment, at any time, the bare female breast below a point  
 36       immediately above the top of the areola, human genitals, pubic  
 37       region, or buttocks, even if partially covered by opaque material or  
 38       completely covered by translucent material.

39       **Sec. 14.** As used in this chapter, "nudity" means the showing:  
 40       (1) of the human male or female genitals or pubic area with  
 41       less than a fully opaque covering;  
 42       (2) of the female breast with less than a fully opaque covering



1 of any part of the nipple; or

2 (3) of the covered male genitals in a discernibly turgid state.

3 Sec. 15. As used in this chapter, "open office" means an office  
4 at an escort service:

5 (1) where the escort business is transacted;

6 (2) that is open to patrons or prospective patrons during all  
7 hours during which escorts are working; and

8 (3) that is managed or operated by an employee, officer,  
9 director, or owner of the escort service having authority to  
10 bind the service to escort and patron contracts and adjust  
11 patron and consumer complaints.

12 Sec. 16. As used in this chapter, "operator" means any person,  
13 partnership, or corporation operating, conducting, or maintaining  
14 an adult oriented establishment.

15 Sec. 17. As used in this chapter, "person" means an individual,  
16 a partnership, a limited liability entity, a firm, a corporation, or an  
17 association.

18 Sec. 18. As used in this chapter, "rap parlor" means an  
19 establishment or place primarily in the business of providing  
20 nonprofessional conversation or similar service for adults.

21 Sec. 19. As used in this chapter, "sauna" means an  
22 establishment or place primarily in the business of providing:

23 (1) a steam bath; or

24 (2) massage services.

25 Sec. 20. As used in this chapter, "service oriented escort" means  
26 an escort who:

27 (1) operates from an open office;

28 (2) does not employ or use an escort runner;

29 (3) does not advertise that sexual conduct will be provided to  
30 the patron or work for an escort bureau that so advertises;  
31 and

32 (4) does not offer or provide sexual conduct.

33 Sec. 21. As used in this chapter, "service oriented escort  
34 bureau" means an escort bureau that:

35 (1) maintains an open office at an established place of  
36 business;

37 (2) employs or provides only escorts who possess valid permits  
38 issued under this chapter;

39 (3) does not use an escort bureau runner; and

40 (4) does not advertise that sexual conduct will be provided to  
41 a patron.

42 Sec. 22. As used in this chapter, "sexual conduct" means the

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engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttocks, or female breast of a person for the purpose of arousing or gratifying the sexual desire of another person.

Sec. 23. As used in this chapter, "sexual encounter center" means a business or commercial enterprise that, as one (1) of its primary business purposes, offers for any form of consideration:

- (1) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) physical contact between two (2) or more individuals when one (1) or more of the persons exposes to view of the persons within the establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material.

Sec. 24. As used in this chapter, "sexually oriented escort" means an escort who:

- (1) employs as an employee, agent, or independent contractor an escort bureau runner;
- (2) works for, as an agent, employee, or contractor, or is referred to a patron by, a sexually oriented escort bureau;
- (3) advertises that sexual conduct will be provided, or works for, as an employee, agent, or independent contractor, or is referred to a patron by, an escort bureau that so advertises;
- (4) solicits, offers to provide, or provides acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee in addition to the fee charged by the escort bureau;
- (5) works as an escort without having a current valid permit issued under this chapter in the person's possession at all times while working as an escort; or
- (6) accepts a fee from a patron who has not first been delivered a contract.

Sec. 25. As used in this chapter, "sexually oriented escort bureau" means an escort bureau that:

- (1) does not maintain an open office;
- (2) employs as an employee, agent, or independent contractor an escort bureau runner;
- (3) advertises that sexual conduct will be provided or that escorts who provide sexual conduct will be provided, referred, or introduced to a patron;



(4) solicits, offers to provide, or provides acts of sexual conduct to an escort patron;

(5) employs, contracts with, or provides or refers escorts who do not possess valid permits issued under this chapter;

(6) does not deliver contracts to every patron or customer; or

(7) employs, contracts with a sexually oriented escort, or refers or provides to a patron a sexually oriented escort.

Sec. 26. As used in this chapter, "sexual stimulation" means to excite or arouse the prurient interest or to offer or solicit acts of sexual conduct.

Sec. 27. As used in this chapter, "specified anatomical areas" means:

(1) less than completely and opaquely covered:

(A) human genitals;

(B) pubic region;

(C) buttocks; and

(D) female breasts below a point immediately above the top of the areola; and

(2) human male genitals in a discernibly turgid state, even if completely opaquely covered.

Sec. 28. As used in this chapter, "specified criminal act" and "specified criminal activities" refer to the following criminal offenses:

(1) Rape under IC 35-42-4-1;

(2) Criminal deviate conduct under IC 35-42-4-2;

(3) Child molesting under IC 35-42-4-3;

(4) Child exploitation under IC 35-42-4-4;

(5) Possession of child pornography under IC 35-42-4-4;

(6) Vicarious sexual gratification under IC 35-42-4-5;

(7) Child solicitation under IC 35-42-4-6;

(8) Child seduction under IC 35-42-4-7;

(9) Sexual battery under IC 35-42-4-8; and

(10) Sexual misconduct with a minor under IC 35-42-4-9.

Sec. 29. As used in this chapter, "specified services" means massage services, private dances, private modeling, acting as an escort, and any other live adult entertainment.

Sec. 30. As used in this chapter, "specified sexual activities" means:

(1) human genitals in a state of sexual stimulation or arousal;

(2) acts of human masturbation, sexual intercourse, or deviate sexual conduct; or

(3) fondling or erotic touching of human genitals, pubic





region, buttocks, or female breasts.

**Sec. 31. (a)** An adult oriented establishment must have a license issued by a licensing authority.

**(b)** A license may be issued only for one (1) adult oriented establishment located at a fixed and certain place. A person who operates more than one (1) adult oriented establishment must have a license for each adult oriented establishment.

**(c)** A building, premises, structure, or other facility that contains an adult oriented establishment may not contain any other kind of adult oriented establishment.

**(d)** A license or interest in a license may not be transferred.

**(e)** An entertainer, employee, escort, or operator shall not knowingly:

**(1)** work in or about; or

**(2)** perform any service directly related to or at the request of the operation of;

an unlicensed adult oriented establishment or escort service.

**(f)** A license may not be issued by the authority unless the applicant certifies, by proof satisfactory to the authority, that the applicant has satisfied the rules, regulations, and provisions of the applicable zoning requirements in the political subdivision.

**Sec. 32. (a)** A person who desires a license shall make application to the licensing authority. A copy of the application shall be distributed promptly to the local law enforcement official.

**(b)** The application for a license must be on a form provided by the authority. An applicant for a license shall furnish the following information under oath:

**(1)** Name and address of the applicant for the license for the adult establishment, including all aliases.

**(2)** Written proof that all individuals employed by the applicant are at least eighteen (18) years of age.

**(3)** The business, occupation, or employment of the applicant for an adult oriented establishment license for five (5) years immediately preceding the date of the application.

**(4)** The adult oriented establishment or similar business license history of the applicant. The applicant shall include whether the applicant, in previously operating in any county, city, or state under a license, has had the license revoked or suspended, the reason for revocation or suspension, and the business activity or occupation subject to the suspension or revocation.

**(5)** Any conviction for a specified criminal act.



(6) The address of the adult oriented establishment to be operated by the applicant.

(7) If the applicant is:

(A) a corporation, the application shall specify:

(i) the name, address, and telephone number of the corporation;

(ii) the date and the state of incorporation;

(iii) the name and address of the registered agent for service of process of the corporation;

(iv) the names and addresses of the officers and directors of the corporation; and

(v) the names and addresses of any persons holding at least fifty percent (50%) of the stock of the corporation;

(B) a partnership, the application shall specify:

(i) the name and address of the partnership; and

(ii) the name and address of all general partners of the partnership; or

(C) a limited partnership, the application shall specify the name and address of all general partners who have a controlling interest in the partnership.

(8) A statement by the applicant that the applicant is familiar with all laws and regulations governing the operation of an adult establishment and is in compliance with them.

(c) Not later than ten (10) days after receiving the results of the investigation conducted by the authority, or by a local law enforcement official for the authority, the authority shall notify the applicant that the application is granted, denied, or held for further investigation. Additional investigation may not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of the additional investigation, the authority shall advise the applicant in writing whether the application is granted or denied.

(d) Failure or refusal of the applicant to give any information relevant to the investigation of the application, the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application, or the applicant's refusal to submit to or cooperate with any investigation required by this chapter constitutes an admission by the applicant that the applicant is ineligible for a license and is grounds for denial of the license by the authority.

Sec. 33. (a) To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:



**(1) If the applicant is an individual, the applicant:**

**(A) must be at least eighteen (18) years of age;**

**(B) must not have had a license revoked within five (5) years immediately preceding the date of the application;**

**(C) must not have been convicted of any violation of this chapter within five (5) years immediately preceding the date of the application; and**

**(D) must not have been convicted of a specified criminal act for which:**

**(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;**

**(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or**

**(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.**

**The fact that a conviction is being appealed has no effect on disqualification of the applicant.**

**(2) If the applicant is a corporation:**

**(A) all officers, directors, and stockholders required to be named under this chapter must be at least eighteen (18) years of age;**

**(B) an officer, director, and stockholder required to be named under this chapter may not have had an adult oriented establishment license revoked within five (5) years immediately preceding the date of the application;**

**(C) an officer, director, or stockholder required to be named under this chapter may not have a conviction for a violation of this chapter within five (5) years immediately preceding the date of the application; and**

**(D) the applicant or officer, director, or stockholder required to be named by this chapter may not have a conviction for a specified criminal act for which:**

**(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;**

**(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or**

**(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.**

**The fact that a conviction is being appealed has no effect on disqualification of the applicant.**

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1           **(3) If the applicant is a partnership, joint venture, or any**  
 2           **other type of organization where two (2) or more persons**  
 3           **have a financial interest:**

4               **(A) all persons having a financial interest in the**  
 5               **partnership, joint venture, or other type of organization**  
 6               **must be at least eighteen (18) years of age;**

7               **(B) all persons having a financial interest in the**  
 8               **partnership, joint venture, or other type of organization**  
 9               **may not have had a license revoked within five (5) years**  
 10              **immediately preceding the date of the application;**

11              **(C) an applicant or person having a financial interest in the**  
 12              **partnership, joint venture, or other type of organization**  
 13              **may not have a conviction for a violation of this chapter**  
 14              **within five (5) years immediately preceding the date of the**  
 15              **application; and**

16              **(D) the applicant or any person having a financial interest**  
 17              **required to be disclosed may not have a conviction for a**  
 18              **specified criminal act for which:**

19                   **(i) less than two (2) years have elapsed since the date of**  
 20                   **conviction if the conviction is for a misdemeanor offense;**

21                   **(ii) less than five (5) years have elapsed since the date of**  
 22                   **conviction if the conviction is for a felony offense; or**

23                   **(iii) less than five (5) years have elapsed since the date of**  
 24                   **conviction for two (2) or more misdemeanor offenses**  
 25                   **occurring within any twelve (12) month period.**

26              **The fact that a conviction is being appealed shall have no**  
 27              **effect on disqualification of the applicant.**

28              **(b) A license may not be issued unless the authority or sheriff's**  
 29              **department has investigated the applicant's qualifications to be**  
 30              **licensed. The results of that investigation shall be filed in writing**  
 31              **with the authority not later than twenty (20) days after the date of**  
 32              **the application.**

33              **(c) An applicant who has been convicted of specified criminal**  
 34              **activities may not be denied a permit based on those convictions**  
 35              **once the period required in this section has elapsed.**

36              **Sec. 34. (a) To provide proper administration of this chapter,**  
 37              **the authority, its authorized representative, or local law**  
 38              **enforcement may conduct investigations of persons engaged in the**  
 39              **operation of any adult oriented establishment and inspect the**  
 40              **license of the operators and establishment for compliance.**

41              **(b) Refusal of an operation or establishment to permit**  
 42              **inspections is grounds for revocation of a license, suspension of a**



license, or refusal to issue a license under this chapter.

(c) Not later than ten (10) days after receiving the results of the investigation, the authority shall notify the applicant that the application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days, unless otherwise agreed to by the applicant. Upon the conclusion of the additional investigation, the authority shall advise the applicant in writing whether the application is granted or denied.

(d) If an additional investigation is held, upon the expiration of the thirtieth day, the applicant may begin operating the business for which the license is sought, unless or until the authority or its authorized representative notifies the applicant of a denial of the application and states the reasons for that denial.

Sec. 35. (a) The authority may enter into any state court having proper jurisdiction to:

(1) seek an injunction against a person or adult oriented establishment not in compliance with the provisions of this chapter; and

(2) enforce this chapter.

(b) Any violation of an injunction obtained under this section constitutes contempt with a fine of fifty dollars (\$50).

(c) Each day in contempt of an injunction is considered a separate offense.

Sec. 36. (a) The authority shall revoke, suspend, or annul a license for any of the following reasons:

(1) Discovery that false or misleading information or data were given on any application or that material facts were omitted from any application.

(2) The operator or entertainer or any employee of the operator violates this chapter or any rule adopted by the authority. However, in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a license suspension of thirty (30) days if the authority finds that the operator had no actual or constructive knowledge of the violation and could not, by the exercise of due diligence, have had actual or constructive knowledge.

(3) The operator becomes ineligible to obtain a license.

(4) A cost or fee required to be paid by this chapter is not paid.

(5) An alcoholic beverage is served or consumed on the



premises of an adult oriented establishment that is not licensed by the alcoholic beverage commission.

(6) An operator employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit.

(7) An operator, employee, or entertainer sells, furnishes, gives, or displays or causes to be sold, furnished, given, or displayed to any minor any adult oriented entertainment or adult oriented material.

(8) An operator, employee, or entertainer denies access of law enforcement personnel to any portion of the licensed premises where adult oriented entertainment is permitted or to any portion of the licensed premises where adult oriented material is displayed or sold.

(9) An operator fails to maintain the licensed premises in compliance with the regulations of the state department of health.

(10) An operator, employee, or entertainer is convicted of a specified criminal act provided that the violation occurred on the licensed premises.

(b) Before revoking or suspending a license or permit, the authority shall give the license holder or permit holder not less than ten (10) and not more than twenty (20) days written notice of the charges against the license holder or permit holder and of the revocation of the license or permit, or of the period the license or permit is to be suspended. The notice must advise the license holder or permit holder of the license holder's or permit holder's right to request a hearing before the authority. If the license holder or permit holder does not request in writing a hearing before the authority within the time stated in the notice, the suspension or revocation is effective beginning the date stated in the notice.

(c) If the license holder or permit holder desires to request a hearing before the authority to contest the suspension or revocation, the request must be made in writing to the authority not later than ten (10) days after the license holder's or permit holder's receipt of the notification from the authority. If the license holder or permit holder timely requests a hearing, the effective date of a suspension or hearing is stayed pending the final outcome of judicial proceedings to determine whether the license or permit has been properly revoked or suspended under the law.

(d) If the license holder or permit holder timely requests a



1 hearing, a public hearing must be held not later than fifteen (15)  
 2 days after the authority receives the request. The hearing must be  
 3 before the authority and must allow the license holder or permit  
 4 holder to present evidence. The authority shall hear evidence  
 5 concerning the basis for the suspension or revocation and shall  
 6 affirm or reverse the suspension or revocation at the conclusion of  
 7 the hearing.

8 (e) The hearing must be concluded not later than twenty-two  
 9 (22) days after the license holder's or permit holder's receipt of the  
 10 notification of the suspension or revocation, unless an extension  
 11 beyond that time is requested by the license holder or permit  
 12 holder and granted by the authority.

13 (f) If the authority affirms the suspension or revocation, the  
 14 attorney for the authority, or the prosecuting attorney, shall  
 15 institute suit for declaratory judgment in a court of record in the  
 16 county not later than five (5) days after the date of an affirmation,  
 17 seeking an immediate judicial determination of whether the license  
 18 or permit has been properly revoked or suspended under the law.

19 (g) An operator whose license is revoked is not eligible to receive  
 20 a license for five (5) years after the date of revocation.

21 (h) The applicant is entitled to prompt judicial review of a  
 22 license suspension or revocation.

23 (i) The authority has the burden of showing that a revocation or  
 24 suspension of a license under this section is not arbitrary or  
 25 capricious.

26 Sec. 37. (a) If an application for the issuance of a license or the  
 27 renewal of a license is denied, the authority shall notify the  
 28 applicant in writing of the reasons for such action.

29 (b) Notice of denial of an application must advise the applicant  
 30 of the applicant's right to request a hearing before the authority.  
 31 If the applicant desires to request a hearing before the authority to  
 32 contest the denial of an application, the request must be made in  
 33 writing to the authority not later than ten (10) days after the  
 34 applicant's receipt of the notification of the denial of the  
 35 application. If the applicant timely requests a hearing, a public  
 36 hearing shall be held not later than fifteen (15) days after the  
 37 authority's receipt of a request. The hearing must be held before  
 38 the authority. At that time the applicant may present evidence as  
 39 to why the application should not be denied. The authority shall  
 40 hear evidence concerning the basis for denial of the application and  
 41 shall affirm or reverse the denial of an application at the  
 42 conclusion of the hearing. A hearing shall be concluded not later



1 than twenty-two (22) days after the applicant's receipt of  
 2 notification of denial of an application, unless an extension beyond  
 3 that time is requested by the applicant and granted by the  
 4 authority.

5 (c) If the authority affirms the denial of an application, not later  
 6 than five (5) days after the date of a denial, the county attorney or  
 7 the prosecuting attorney shall institute suit for declaratory  
 8 judgment in a court of record seeking an immediate judicial  
 9 determination of whether the application has been properly denied  
 10 under the law.

11 (d) The applicant is entitled to prompt judicial review for the  
 12 denial of an application for license or renewal of license.

13 (e) The authority has the burden of showing that a denial of a  
 14 license under this section is not arbitrary or capricious.

15 Sec. 38. (a) A license issued under this chapter is valid for one  
 16 (1) calendar year after the date of issuance, unless revoked before  
 17 expiration, and must be renewed before operation is allowed in the  
 18 following year.

19 (b) Each original application and renewal application shall be  
 20 accompanied by a fee of three thousand dollars (\$3,000).

21 (c) An operator desiring to renew a license shall make  
 22 application to the authority. The application for renewal must be  
 23 filed not later than sixty (60) days before the license expires. The  
 24 application for renewal shall be filed in triplicate with and dated  
 25 by the authority. A copy of the application for renewal shall be  
 26 distributed promptly by the authority to the local law enforcement  
 27 official and to the state department of health. The application for  
 28 renewal must contain information and data, given under oath or  
 29 affirmation, as may be required by the authority, but not less than  
 30 the information contained in the original application.

31 (d) In addition to the renewal fee, a late penalty of fifty dollars  
 32 (\$50) per day shall be assessed against the applicant who files for  
 33 a renewal less than thirty (30) days before the license expires.

34 (e) If the local law enforcement official is aware of any  
 35 information bearing on the operator's qualifications, the  
 36 information must be filed in writing with the authority not later  
 37 than ten (10) days after the date of the application for renewal.

38 (f) If the application is denied, one-half (1/2) of the fee shall be  
 39 returned.

40 Sec. 39. (a) The public portion of an adult oriented  
 41 establishment may be open from noon to midnight.

42 (b) The public portion of an adult oriented establishment shall





be open to inspection at all reasonable times by the local law enforcement officials, the authority, and the state board of health.

(c) The operator shall maintain a register of all employees, showing the:

- (1) name;
- (2) aliases used by the employee, including performance names and stage names;
- (3) home address;
- (4) age;
- (5) birth date;
- (6) sex;
- (7) height;
- (8) weight;
- (9) color of hair and eyes;
- (10) telephone number;
- (11) Social Security number;
- (12) driver license number;
- (13) date of employment and termination; and
- (14) duties;

of each employee and other information as may be required by the authority. The above information concerning each employee must be maintained in the register on the premises for three (3) years after termination.

(d) At all reasonable times, the operator shall make the register of employees available immediately for inspection by the authority, the local law enforcement official, and the state department of health upon demand.

(e) An act or omission by an employee constituting a violation of this chapter is considered the act or omission of the operator if the act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct. The operator is punishable for an act or omission in the same manner as if the operator committed the act or caused the omission.

(f) An operator is responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of this chapter is considered the act or omission of the operator for purposes of determining whether the operator's license is revoked, suspended, or renewed.

(g) An employee of an adult oriented establishment shall neither allow a minor to loiter around or to frequent an adult oriented



establishment nor allow a minor to view adult entertainment.

(h) Every adult oriented establishment shall be physically arranged so that the entire interior portion of the booths, cubicles, rooms, or stalls where adult entertainment is provided is visible from the common area of the premises. Visibility may not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction.

(i) The operator is responsible for and shall provide that any room or area used for the purpose of viewing adult oriented motion pictures or other types of live adult entertainment is readily accessible at all times and is continuously open to view in its entirety.

(j) The license issued under this chapter shall be conspicuously displayed in the common area of the premises at all times.

(k) A sign must be conspicuously displayed in the common area of the premises and must read as follows:

"This Adult Oriented Establishment is Regulated by IC 24-4-12. Entertainers are:

(1) Not permitted to engage in any type of sexual conduct.

(2) Not permitted to expose their sex organs.

(3) Not permitted to demand or collect all or any portion of a fee for entertainment before its completion.

(4) Not permitted to appear in a state of full nudity."

(l) The permit shall be kept by an employee, entertainer, or escort so that it is readily available for display immediately upon request of a customer, the authority, the local law enforcement official, the state board of health, or any person designated by the authority.

(m) Not less than one (1) time per month the operator shall permit the state department of health to inspect the adult oriented establishment. The state department of health shall prepare a report for the authority of all findings.

**Sec. 40. (a)** An operator, entertainer, or employee of an adult oriented establishment shall not permit:

(1) sexual intercourse;

(2) oral copulation;

(3) anal copulation; or

(4) any other contact stimulation of the genitalia;

to be performed. This includes the extension of an offer to perform, performance on a patron, performance by employees or patrons, or the allowance of a patron to perform.

(b) An operator, entertainer, or employee of an adult oriented



establishment shall not encourage or permit any person upon the premises to touch, caress, or fondle the:

- (1) breasts;
- (2) buttocks;
- (3) anus; or
- (4) genitals;

of any operator, entertainer, or employee.

(c) An entertainer, employee, or customer shall not be permitted to have any physical contact with any other entertainer, employee, or customer on the premises during any performance, and all performances shall only occur upon a stage that is:

- (1) at least eighteen (18) inches above the immediate floor level; and
- (2) removed at least six (6) feet from the nearest entertainer, employee, and customer.

(d) An employee or entertainer, while on the premises of an adult oriented establishment, shall not:

- (1) engage in sexual intercourse;
- (2) engage in deviant sexual conduct;
- (3) appear in a state of nudity;
- (4) fondle the employee's or entertainer's own genitals; or
- (5) fondle the genitals of another.

(e) If the license holder operates an escort bureau, the bureau may not be operated as a sexually oriented escort bureau.

(f) A permit holder of an escort bureau shall not conduct the escort bureau as a sexually oriented escort bureau.

(g) A license holder shall not advertise that the license holder offers sexual stimulation or sexual gratification.

(h) A license holder shall not display a sign or advertisement in public view that:

- (1) contains a source of illumination;
- (2) uses a picture, the silhouette, or any part of a silhouette of the:
  - (A) bare female breast;
  - (B) human genitals;
  - (C) human pubic region; or
  - (D) human buttocks; or
- (3) exceeds the size and height restrictions determined by the authority.

**Sec. 41. (a)** A person may not be an entertainer, employee, or escort in an adult oriented establishment without a valid permit issued by the authority.



1       (b) A person desiring to secure a permit shall make application  
2 to the authority. The application shall be filed in triplicate with and  
3 dated by the authority. A copy of the application shall be  
4 distributed promptly by the authority to the local law enforcement  
5 official and the state department of health.

6       (c) The application for a permit shall be upon a form provided  
7 by the authority.

8       (d) An applicant for a permit shall furnish the following  
9 information under oath:

- 10       (1) name;
- 11       (2) aliases used by the employee, including performance
- 12       names and stage names;
- 13       (3) home address;
- 14       (4) written proof that the applicant is at least eighteen (18)
- 15       years of age;
- 16       (5) birth date;
- 17       (6) sex;
- 18       (7) height;
- 19       (8) weight;
- 20       (9) color of hair and eyes;
- 21       (10) telephone number;
- 22       (11) Social Security number;
- 23       (12) driver license number;
- 24       (13) the adult oriented establishment or similar business
- 25       permit history of the applicant including whether the person,
- 26       in previously operating in any city or state under permit, has
- 27       had the permit revoked or suspended, the reason for the
- 28       revocation or suspension of the permit, and the business
- 29       activity or occupation subject to the suspension or revocation;
- 30       and
- 31       (14) any conviction for a specified criminal act.

32       The applicant shall also furnish two (2) portrait photographs at  
33 least two (2) inches by two (2) inches of the applicant and provide  
34 a statement by the applicant that the applicant is familiar with the  
35 provisions of this chapter and is in compliance with them.

36       (e) Not later than ten (10) days after receiving the results of the  
37 investigation conducted by the authority or the local law  
38 enforcement official, the authority shall notify the applicant that  
39 the applicant's application is granted, denied, or held for further  
40 investigation. An additional investigation shall not exceed an  
41 additional thirty (30) days unless otherwise agreed to by the  
42 applicant. Upon the conclusion of additional investigations, the

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1 authority shall advise the applicant in writing whether the  
2 application is granted or denied.

3 (f) If an additional investigation is held, upon the expiration of  
4 the thirtieth day, the applicant shall be permitted to begin  
5 operating the business for which the license is sought, unless or  
6 until the authority or its authorized representative notifies the  
7 applicant of a denial of the application and states the reasons for  
8 that denial.

9 (g) Failure or refusal of the applicant to give any information  
10 relevant to the investigation of the application, the applicant's  
11 refusal or failure to appear at any reasonable time and place for  
12 examination under oath regarding the application, the applicant's  
13 refusal to submit to or cooperate with any investigation required  
14 by this chapter constitutes an admission by the applicant that the  
15 applicant is ineligible for a permit and is grounds for denial of the  
16 permit by the authority.

17 Sec. 42. (a) A permit issued under this chapter is valid for one  
18 (1) year from the date of issuance, unless revoked before expiration  
19 and must be renewed before an entertainer is allowed to provide  
20 entertainment in an adult oriented establishment in the following  
21 calendar year.

22 (b) Each original permit application and renewal application  
23 shall be accompanied by a fee of two hundred fifty dollars (\$250).

24 (c) A person desiring to renew a permit shall make application  
25 to the authority. The application for renewal must be filed not later  
26 than thirty (30) days before the permit expires. The application for  
27 renewal shall be filed in triplicate with and dated by the authority.  
28 A copy of the application for renewal shall be distributed promptly  
29 by the authority to the local law enforcement official and to the  
30 state department of health. The application for renewal must  
31 contain information and data, given under oath or affirmation, as  
32 may be required by the authority, but not less than the information  
33 contained in the original application.

34 (d) In addition to the renewal fee, a late penalty of five dollars  
35 (\$5) shall be assessed against the applicant who files for renewal  
36 less than thirty (30) days before the license expires.

37 (e) If the application is denied, one-half (1/2) of the fee shall be  
38 returned.

39 (f) If the local law enforcement official is aware of any  
40 information bearing on the entertainer's qualifications, that  
41 information shall be filed in writing with the authority not later  
42 than ten (10) days after the date of the application for renewal.



(g) An application for renewal of a permit shall be handled, investigated, and approved or denied within the same periods as those established for original permit application.

(h) In the event a license renewal application or permit renewal application is denied, the applicant has all rights of appeal to the authority as set forth for a license issued under this chapter.

**Sec. 43. (a)** To receive a permit as an entertainer or escort, an applicant must meet the following standards:

(1) The applicant must be at least eighteen (18) years of age.

(2) The applicant shall not have had a permit revoked within two (2) years immediately preceding the date of the application.

(3) The applicant shall not have been convicted of a specified criminal act for which:

(A) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(B) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or

(C) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.

The fact that a conviction is being appealed has no effect on disqualification of the applicant.

(b) An applicant who has been convicted of specified criminal activities may not be denied a permit based on those convictions once the period required in subsection (a)(3) has elapsed.

(c) A permit may not be issued until the authority or the local law enforcement official has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the authority not later than thirty (30) days after the date of the application.

**Sec. 44. (a)** An operator who violates an adult entertainment license provision of this chapter shall pay a violation fee of one thousand dollars (\$1,000) per violation per day of the violation.

(b) An operator who violates an adult entertainment license provision of this chapter five (5) times in one (1) year shall have the license revoked. An operator whose license is revoked may not reapply for a license for five (5) years.

(c) Each violation of this chapter is a separate offense, and any violation continuing more than one (1) hour shall be considered a separate offense for each hour of violation.

**Sec. 45. (a)** A person who violates an adult entertainment permit



1 provision of this chapter shall pay a violation fee of one hundred  
2 fifty dollars (\$150) per violation per day of the violation.

3 (b) A person who violates an adult entertainment permit  
4 provision of this chapter five (5) times in one (1) year shall have the  
5 permit revoked. A person whose permit is revoked may not  
6 reapply for a permit for five (5) years.

7 (c) Each violation of this chapter is a separate offense, and any  
8 violation continuing more than one (1) hour shall be considered a  
9 separate offense for each hour of violation.

10 Sec. 46. (a) Fees collected for licenses under IC 24-4-12-38 and  
11 penalty fees collected under IC 24-4-12-44 shall be divided:

12 (1) thirty-three and thirty-three hundredths percent (33.33%)  
13 to the authority having jurisdiction over the adult  
14 entertainment;

15 (2) thirty-three and thirty-four hundredths percent (33.34%)  
16 to the local law enforcement agency having jurisdiction over  
17 the adult entertainment; and

18 (3) thirty-three and thirty-three hundredths percent (33.33%)  
19 to the state department of health.

20 (b) Fees collected for permits under IC 24-4-12-42 and penalty  
21 fees collected under IC 24-4-12-45 shall be divided:

22 (1) sixty percent (60%) to the authority having jurisdiction  
23 over the adult entertainment; and

24 (2) forty percent (40%) to the state department of health.

25 SECTION 2. [EFFECTIVE JULY 1, 1999] Notwithstanding  
26 IC 24-4-12, as added by this act, an adult oriented establishment  
27 existing and in operation on July 1, 1999, must submit an  
28 application for a license not later than December 31, 1999. If a  
29 license is not approved, the existing adult oriented establishment  
30 shall cease to operate.

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